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No. 2001/035

TO COUNTY ASSESSORS:

STATUTE OF LIMITATIONS

FOR SUPPLEMENTAL AND ESCAPE ASSESSMENTS

FOR CHANGES IN OWNERSHIP

Senate Bill 2170 (Chapter 647 of the Statutes of 2000) amended sections 75.11 and 532 of the Revenue and Taxation Code¹ to revise the statute of limitations for supplemental and escape assessments involving changes in ownership of real property.² In addition to revising the limitations periods, the measure creates different limitation periods for individuals for certain changes in control and ownership of legal entities with respect to escape assessments.

Effective January 1, 2001, the limitation periods are:

Supplemental Assessments:

- Four years in any case in which a change in ownership statement (COS) was filed under §§480, 480.1, or 480.2, or a preliminary change in ownership report (PCOR) was filed under §480.3.
- Six years in any case in which a change in ownership statement (COS) was filed under §§480, 480.1, or 480.2, or a preliminary change in ownership report (PCOR) was filed under §480.3, if the penalty provided for in §504 is added to the assessment.
- Eight-years where the change in ownership was not recorded and a COS under §480 or a PCOR under §480.3 was not timely filed. (This does not apply to changes in control and ownership of entities.)
- An unlimited period in cases of fraud as defined in §503.³

¹ All statutory references are to the Revenue and Taxation Code unless otherwise noted. Assembly Bill 2891 (Chapter 646, Statutes of 2000) and Senate Bill 2170 (Chapter 647 of the Statutes of 2000) contain almost identical provisions that amend sections 75.11 and 532 of the Revenue and Taxation Code. Since SB 2170 was chaptered last, it is the authority to be used in referencing these amendments.

² The statutes of limitations for new construction were not changed.

³ Section 503 provides for a penalty if any taxpayer or the taxpayer's agent through a fraudulent act or omission causes, or if any fraudulent collusion between the taxpayer or the taxpayer's agent and the assessor or any of the assessor's deputies causes, any taxable tangible property to escape assessment in whole or in part, or to be underassessed.

- An unlimited period in cases of changes in ownership involving property owned by a legal entity if a COS required by either §480.1 or 480.2 has not been filed.

Escape Assessments

- Four years if any document evidencing a change of title or ownership is recorded, regardless of whether a COS or PCOR is filed.
- Six years if the penalty provided for in §504 must be added to the assessment.
- Eight years if COS under §480 or a PCOR under §480.3 is not timely filed and no document evidencing a change of title or ownership is recorded.
- No limitation period in cases of fraud under §503.
- No limitation period in cases of changes in ownership involving property owned by a legal entity if a COS required by either §480.1 or 480.2 has not been filed.

SUPPLEMENTAL ASSESSMENTS

A supplemental assessment is the difference between a new base year value established for a change in ownership or completion of new construction and the taxable value on the assessment roll. Depending on the time of year in which the event occurred, up to two supplemental assessments may be generated for that event: one for the current roll, prorated for the portion of the year remaining after the event date; and a second for the roll being prepared (for events that occur between January 1 and May 31).

The eight-year statute of limitations period is different from the four- and six-year periods in that it begins to run from July 1 of the assessment year in which the event occurred, rather than from July 1 of the assessment year in which the COS or PCOR was filed. This eight-year limitations period is also different from the previous eight-year period that was in effect prior to January 1, 1995, in that it applies only to unrecorded changes in ownership or control by individuals or corporations for which a COS required by section 480 (not legal entities under section 480.1 or 480.2) or a PCOR was not timely filed. The law remains the same for *recorded* changes in ownership, except in situations involving fraud. The limitations period for supplemental assessment(s) in cases of fraud is unlimited.

ESCAPE ASSESSMENTS

An escape assessment is a retroactive assessment intended to rectify an omission or error that caused taxable property to be underassessed (or not assessed at all). Once such an omission or error occurs, the property escapes assessment *each year* thereafter until the underassessment is discovered and corrected. If property escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date, enroll the appropriate value on the roll being prepared, process any necessary corrections to the current roll, and process appropriate escape assessments for the prior years within the statute of limitations.

The new law restores an eight-year statute of limitations on unrecorded changes in ownership for which a COS or PCOR is not timely filed. There are two "unlimited exceptions" where an escape assessment shall be made for each year in which property escaped taxation or was underassessed:

1. Where the penalty provided for in section 503 (fraud) must be added.
2. Where a change in ownership statement is not filed under section 480.1 (regarding change in control of a legal entity pursuant to section 64(c)), or under section 480.2 (regarding change in ownership of a legal entity pursuant to section 64(d)).

In summary, as of January 1, 2001, any escape assessment for a change in ownership of real property must be made within *four years* after July 1 of the assessment year in which the property escaped taxation or was underassessed, with the following exceptions:

- Any escape assessment resulting from an unrecorded change in ownership or change in control for which either a COS (required by section 480) or a PCOR (required by section 480.3) is not filed must be made within *eight years* after July 1 of the assessment year in which the property escaped taxation or was underassessed.
- If property has escaped taxation, in whole or in part, or has been underassessed following a change in ownership and either the section 503 (fraud) penalty must be added or a COS as required by sections 480.1 or 480.2 was not filed,⁴ then escape assessments must be made for *every year* in which the property escaped taxation or was underassessed. However, pursuant to the statement of legislative intent contained in Chapter 1141 of the Statutes of 1981, no escape assessments may be levied prior to the 1982-83 fiscal year.

For real property undergoing a change in ownership, this legislation effectively limits supplemental and escape assessments to four years if the change in ownership is reported. For unrecorded changes in ownership (filing under sections 480 or 480.3), the statute of limitations is eight years.

Subdivision (b)(3) of §532 does not state that its unlimited escape period applies only if the COS under §§480.1 or 480.2 is *timely* filed. It merely says it "was not filed." This raises the question whether the property owner can start the statute of limitations running by filing a COS after the deadline, and if so, what that period should be. In our view, such a filing does start the limitation period running, and the applicable period is four years from the date of filing if the change in ownership was also unrecorded. On the other hand, until the correct COS, PCOR, or business property statement is filed, the statute does not begin to run. Therefore, the number of years for levying supplemental and escape assessments is basically not limited in these cases.

Chapter 647 also amended sections 75.31 and 534 to require assessors to notify assesseees of supplemental or escape assessments on a form prescribed by the Board. Accordingly, we are in

⁴ Assessors should contact the Board's Legal Entity Ownership Program (LEOP) to verify whether a legal entity has not filed a COS after a written request from the Board.

the process of creating two new forms, Notice of Supplemental Assessment and Notice of Escape Assessment. These two forms will be sent to you under a separate Letter To Assessors.

A copy of the revised sections 75.11 and 532 is enclosed. If you have any questions regarding supplemental or escape assessments, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:grs
Enclosure

**REVENUE AND TAXATION CODE SECTIONS 75.11 AND 532,
AS AMENDED BY CHAPTER 647 OF THE STATUTES OF 2000
Effective January 1, 2001**

75.11. (a) If the change in ownership occurs or the new construction is completed on or after January 1 but on or before May 31, then there shall be two supplemental assessments placed on the supplemental roll. The first supplemental assessment shall be the difference between the new base year value and the taxable value on the current roll. In the case of a change in ownership of the full interest in the real property, the second supplemental assessment shall be the difference between the new base year value and the taxable value to be enrolled on the roll being prepared. If the change in ownership is of only a partial interest in the real property, the second supplemental assessment shall be the difference between the sum of the new base year value of the portion transferred plus the taxable value on the roll being prepared of the remainder of the property and the taxable value on the roll being prepared of the whole property. For new construction, the second supplemental assessment shall be the value change due to the new construction.

(b) If the change in ownership occurs or the new construction is completed on or after June 1 but before the succeeding January 1, then the supplemental assessment placed on the supplemental roll shall be the difference between the new base year value and the taxable value on the current roll.

(c) If there are multiple changes in ownership or multiple completions of new construction, or both, with respect to the same real property during the same assessment year, then there shall be a net supplemental assessment placed on the supplemental roll, in addition to the assessment pursuant to subdivision (a) or (b). The net supplemental assessment shall be the most recent new base year value less the sum of (1) the previous entry or entries placed on the supplemental roll computed pursuant to subdivision (a) or (b), and (2) the corresponding taxable value on the current roll or the taxable value to be entered on the roll being prepared, or both, depending on the date or dates the change of ownership occurs or new construction is completed as specified in subdivisions (a) and (b).

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph ~~(1) or (2)~~ (1), (2), or (3), as follows:

(1) The fourth July 1 following the July 1 of the assessment year in which either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, a preliminary change in ownership report was filed pursuant to Section 480.3, or the new construction was completed.

(2) The sixth July 1 following the July 1 of the assessment year in which either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, a preliminary change in ownership report was filed pursuant to Section 480.3, or the new construction was completed, if the penalty provided for in Section 504 is added to the assessment.

(3) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the change in ownership or change in control was unrecorded and a change in ownership statement required by Section 480 or preliminary change in ownership report, as required by Section 480.3, was not timely filed.

(4) Notwithstanding paragraphs (1), (2), and (3), there shall be no limitations period on making a supplemental assessment, if the penalty provided for in Section 503 is added to the assessment.

For the purposes of this subdivision, "assessment year" means the period beginning annually as of 12:01 a.m. on the first day of January and ending immediately prior to the succeeding first day of January. ~~No limitations period specified in paragraph (1) or (2) shall commence unless the filing or transmittal specified in the relevant paragraph has been completed.~~

(e) If, before the expiration of the applicable period specified in subdivision (d) for making a supplemental assessment, the taxpayer and the assessor agree in writing to extend the period for making a supplemental assessment, correction, or claim for refund, a supplemental assessment may be made at any time prior to the expiration of that extended period. The extended period may be further extended by successive written agreements entered into prior to the expiration of the most recent extension.

532. (a) Except as provided in subdivision (b), ~~any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed, and any other~~ any assessment made pursuant to either Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(b) ~~In the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership, the applicable limitations period specified in subdivision (a) shall not commence until July 1 of the assessment year in which either a change in ownership statement, as required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, as required by Section 480.2, is filed with respect to the event giving rise to the escape assessment or underassessment.~~ (1) Any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(2) Any assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. For purposes of this paragraph, an "unrecorded change in ownership or change in control" means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place.

(3) Notwithstanding paragraphs (1) and (2), in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership and either the penalty provided for in Section 503 must be added or a change in ownership statement, as required by Section 480.1 or 480.2 was not filed with respect to the event giving rise to the escape assessment or underassessment, an escape assessment shall be made for each year in which the property escaped taxation or was underassessed.

(c) For purposes of this section, "assessment year" means the period defined in Section 118.